**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

STEVE WEINBERG	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	***CIVIL ACTION NO. 3:06-CV-2332-B***
NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, RICHARD BERTHELSEN, GENE UPSHAW, TOM DEPASO, TRACE ARMSTRONG, ROGER KAPLAN, JOHN COLLINS, KEITH WASHINGTON, TONY AGNONE, HOWARD SHATSKY, and MARK LEVIN	§	**ECF**
	§	
Defendants.	§	
	§	

**APPENDIX IN SUPPORT OF ROGER P. KAPLAN'S
MOTION TO DISMISS AND BRIEF IN SUPPORT**

Description of Document	**Appendix Page Number(s)**
Affidavit of Roger P. Kaplan	2-4
Decision and Order of Roger P. Kaplan, Arbitrator	5-26
Opinion and Award, Roger P. Kaplan, Arbitrator	27-51

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEVE WEINBERG Plaintiff, v. NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, RICHARD BERTHELSEN, GENE UPSHAW, TOM DEPASO, TRACE ARMSTRONG, ROGER KAPLAN, JOHN COLLINS, KEITH WASHINGTON, TONY AGNONE, HOWARD SHATSKY, and MARK LEVIN Defendants.	§ § § § § § § § § § § § § § § § §	CIVIL ACTION NO. 3:06-CV-2332-B ECF

AFFIDAVIT OF ROGER P. KAPLAN

Before me, the undersigned authority, on this day personally appeared Roger P. Kaplan who, after being by me duly sworn, deposed and said:

1. "My name is Roger P. Kaplan. I am over the twenty-one (21) years of age, am of sound mind, and I am qualified and not disqualified by law from making this affidavit. I have personal knowledge of all statements of fact set forth in this affidavit.

2. I serve as an arbitrator in Section 5 and 6 cases for the National Football League Players Association ("NFLPA"). I have served in that capacity since March or April 1994.

3. I maintain an office at 211 North Union Street, Suite 100, Alexandria, Virginia 22314. This is the only office maintained by me.

4. I have served as an arbitrator in one (1) case in which Steve Weinberg, the plaintiff in this litigation ("Weinberg"), appealed a decision of the NFLPA's disciplinary committee's decision immediately to revoke his certification as a Contract Advisor to NFL

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players. This case was docketed as NFLPA 03-D1. On February 26, 2003, I rendered an award denying Weinberg's emergency motion to stay enforcement of the revocation pending his appeal of that disciplinary action imposed by the disciplinary committee. Weinberg was represented in this arbitration by Wayne G. Travell, a licensed Virginia attorney who practices in McLean, Virginia. A copy of this award is attached as Exhibit 1 to this affidavit.

5. On September 5, 2003, I rendered an award on Weinberg's appeal of the NFLPA's disciplinary committee's decision to revoke his certification as a Contract Advisor for three (3) years. In my decision, I changed the revocation to a suspension because I thought the revocation imposed by the disciplinary committee was too harsh. Weinberg was represented in this arbitration by Alan D. Strasser, a licensed attorney who practices in Washington, D.C. A copy of this award is attached as Exhibit 2 to this affidavit.

6. Both of these hearings were conducted in my office in Alexandria, Virginia, and I prepared and issued my awards from that office. I did not mail a copy of either decision to Weinberg, or to anyone else in the state of Texas.

7. I do not maintain an office or a residence in the state of Texas. Nor do I maintain any records in the state of Texas. I am licensed to practice law in the District of Columbia. I have never sought to be licensed to practice law in the state of Texas.

8. I do not have a registered agent for service of process in Texas. I was served with the petition in this case in my office in Alexandria, Virginia on December 7, 2006.

9. I am required, on occasion, to come to the state of Texas for the purpose of serving as an arbitrator in cases in which I have been appointed. This is strictly for the convenience of the parties to the arbitration. However, I did not come to Texas to serve as an arbitrator in any of the disputes that are referenced in Weinberg's petition filed in the state court

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against me and the other defendants. I estimate that I have been in Texas no more than three (3) times in the past five (5) years."

Further, Affiant sayeth not.

Roger P. Kaplan

Roger P. Kaplan

COMMONWEALTH OF VIRGINIA §
§
CITY OF ALEXANDRIA §

SUBSCRIBED AND SWORN TO before me, this 15TH day of December 2006.

My Commission Expires:
1/15/08

NOTARY PUBLIC IN AND FOR THE
COMMONWEALTH OF VIRGINIA

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NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

In The Matter of Arbitration Between NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION DISCIPLINARY COMMITTEE and STEVEN WEINBERG	Case No. NFLPA 03-D1

DECISION AND ORDER OF

ROGER P. KAPLAN, ESQ., ARBITRATOR

APPEARANCES:

For NFLPA Disciplinary Committee: Richard Berthelsen, Esq.

For Steven Weinberg: Wayne G. Travell, Esq.

STATEMENT OF THE CASE

On February 7, 2003, Mr. Steven Weinberg (Weinberg) appealed the National Football League Players Association (NFLPA) Disciplinary Committee's decision to immediately revoke his certification on February 6, 2003. I held a hearing on a Motion to Stay the discipline on Tuesday, February 18, 2003 in Alexandria, Virginia. Both parties had the opportunity to examine and cross-examine witnesses as well as present evidence and argument in support of their respective positions. A verbatim transcript was made of the proceeding.

ISSUES

Upon consideration of the record, I find that the issues are:

1. Whether the February 6, 2003 decertification of Steven Weinberg by the Disciplinary Committee is stayed by his appeal on February 7, 2003?

2. If so, what is the appropriate remedy?

PERTINENT PROVISIONS OF THE NFL COLLECTIVE BARGAINING AGREEMENT (1993-2005)

Article II - Governing Agreement

Section 1. The provisions of this Agreement supersede conflicting portions of the NFL Player Contract, the NFL Constitution and Bylaws, or any other document affecting terms and conditions of employment of NFL players, and all players, Clubs, the NFLPA, the NFL, and the Management Council will be bound hereby. The provisions of the Stipulation and Settlement Agreement, *as amended,* in White v. NFL, No. 4-92-906 (D. Minn.) ("Settlement Agreement"), shall supersede any conflicting provisions of this Agreement.

Article VI - NFLPA Agent Certification

Section 1. Exclusive Representation: The NFLMC and the Clubs recognize that the NFLPA regulates the conduct of agents who represent players in individual contract negotiations with the Clubs. The NFLMC and the Clubs agree that the Clubs are prohibited from engaging in individual contract negotiations with any agent who is not listed by the NFLPA as being duly certified by the NFLPA in accordance with its role as exclusive bargaining agent for NFL players. The NFLPA shall provide and publish a list of agents who are currently certified in accordance with its agent regulation system, and shall notify the NFLMC and the Clubs of any deletions or additions to the list pursuant to its procedures. The NFLPA agrees that it shall not delete any agent from its list until that agent has exhausted the opportunity to appeal the deletion to a neutral arbitrator pursuant to its agent regulation system, except: (i) where an agent has failed to pass a written examination given by the NFLPA; or (ii) in extraordinary circumstances where the NFLPA's investigation discloses that the agent's conduct is of such a serious nature as to justify immediately invalidating the agent's certification. The NFLPA shall have the sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification of an agent. * * *

Article LV - Miscellaneous

Section 14. Binding Effect: This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their heirs, executors, administrators, representatives, agents, successors and assigns and any corporation into or with which any corporate party hereto may merge or consolidate.

PERTINENT NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS (as Amended June 1, 1998)

SECTION 3: STANDARD OF CONDUCT FOR CONTRACT ADVISORS

A. General Requirements

. . . a Contract Advisor shall:

* * *

(15) Become and remain sufficiently educated with regard to NFL structure and economics, applicable Collective Bargaining Agreements and other governing documents, basic negotiating techniques, and

developments in sports law and related subjects. To ascertain whether the Contract Advisor is sufficiently educated with regard to the above-related subjects, the NFLPA may require a Contract Advisor to successfully pass a Contract Advisor examination;

SECTION 6: OVERSIGHT AND COMPLIANCE PROCEDURE

E. Appeal

The Contract Advisor against whom a Complaint has been filed under this Section may appeal the Disciplinary Committee's proposed disciplinary action to the outside arbitrator by filing a written Notice of Appeal with the arbitrator within twenty (20) days following Contract Advisor's receipt of notification of the proposed disciplinary action. The timely filing of a Notice of Appeal shall result in an automatic stay of any disciplinary action.

* * * The failure of Contract Advisor to file a timely appeal shall be deemed to constitute an acceptance of the discipline which shall then promptly be imposed.

FACTS

This proceeding concerns Weinberg's Motion to Stay his decertification by the National Football League Players Association Disciplinary Committee (Disciplinary Committee) on February 6, 2003. The Disciplinary Committee refused to stay that decertification based on Weinberg's February 7, 2003 appeal of its decision. As noted, a hearing on this motion was held on February 18, 2003. At the hearing, the following evidence was adduced.

Steven Weinberg (Weinberg) has been an NFLPA certified Contract Advisor (Advisor) since 1982. His office is in Dallas, Texas.

Section 6E of the NFLPA Regulations Governing Contract Advisors (NFLPA Regulations) provides, in relevant part:

> The Contract Advisor against whom a Complaint has been filed under this Section may appeal the Disciplinary Committee's proposed disciplinary action to the outside arbitrator by filing a written notice of appeal within twenty (20) days following Contract Advisor's receipt of notification of the proposed disciplinary action. The timely filing of a Notice of Appeal shall result in an automatic stay of any disciplinary action. (Emphasis supplied)

Prior to its amendment in 2000 (see below), Article VI, Section 1 of the NFL Collective Bargaining Agreement (CBA) provided, in relevant part:

> Agent Certification
>
> Section 1. * * * The NFLPA agrees that it shall not delete any agent from its list until that agent has exhausted the opportunity to appeal the deletion to a neutral arbitrator pursuant to its agent regulation system. * * *

In 1999, the Disciplinary Committee disciplined Tank Black, a Contract Advisor, for fraud and misappropriation of players' monies. However, pursuant to the CBA and NFLPA Regulations in existence at that time, the Disciplinary Committee was unable to decertify Black immediately. Thus, despite the imposition of disciplinary action, Black continued to represent players until the ultimate resolution of his case, by virtue of his appeal.

On May 12, 2000, the NFLPA Board of Player Representatives (Board) issued a memorandum to Contract Advisors, the subject of which was "2000 Amendments to the NFLPA Regulations Governing Contract Advisors". The memorandum provided, in relevant part:

> At the NFLPA Board of Player Representatives meetings this past spring, the Board of Player Representatives passed the following resolution amending the NFLPA Regulations Governing Contract Advisors:
>
> **RESOLVED** that the NFLPA Regulations Governing Contract Advisors be amended as follows:
>
> > 1. Provide that in the extraordinary circumstances where the Disciplinary Committee's investigation discloses that the Contract Advisor's conduct is of such a serious nature as to justify immediately invalidating his/her certification, the Disciplinary Committee is authorized to take such action. In such event, the Contract Advisor may appeal that action in the same manner as he/she could appeal from a proposed suspension or termination set forth in Section 6 of the Regulations.
> >
> > * * *
>
> These amendments were effective as of March 19, 2000[1].

Mr. Trace Armstrong, President of the NFLPA, testified that the Board did not intend that the stay established in Section 6E

1 For ease of reference, this amendment will be referred to as "the March 2000 Amendment".

would apply "in this circumstance", that is, the immediate revocation of a Contract Advisor's certification pursuant to March 2000 Amendment. The following questions and answers at the February 18, 2003 hearing are instructive:

> Berthelsen: When you passed this resolution, you didn't intend to prevent any appeals, even if the discipline went into effect before the appeal, did you?
>
> Armstrong: The intent of the rule was to be able to prevent an agent from continuing an activity until his appeal was heard. The intent of the rule was to immediately revoke an agent's certification based on what the committee considered serious misconduct and still allow that person to appeal down the road.
>
> Berthelsen: Pursuant to Section 6E?
>
> Armstrong: Right.
>
> Berthelsen: But not the sentence of 6E that grants an automatic stay?
>
> Armstrong: No.

Armstrong testified that the March 2000 Amendment as passed by the Board was not "self-enforcing". He indicated that Article VI of the CBA needed an amendment, apparently so as to conform to the March 2000 Amendment adopted by the Board.

In August 2000, the NFL and NFLPA amended their CBA to provide, in relevant part:

Agent Certification

Section 1. * * * The NFLPA agrees that it shall not delete any agent from its list until that agent has exhausted the opportunity to appeal the deletion to a neutral arbitrator pursuant to its agent regulation system, except: (i) where an agent has failed to pass a written examination given by the NFLPA; or (ii) in extraordinary circumstances where the NFLPA's investigation discloses that the agent's conduct is of such a serious nature as to justify immediately invalidating the agent's certification. * * *

The NFLPA maintains an Internet web site on which is contained a wide range of information regarding the NFLPA, including the NFLPA Regulations. There is dispute in the record regarding when and whether the stated amendments appeared on the web site and/or when and whether Weinberg had notice of the amendments.

In a letter dated November 19, 2002, the Disciplinary Committee filed a Disciplinary Complaint (Complaint) against Weinberg pursuant to Section 6B of the NFLPA Regulations[2]. At the February 18th hearing, Berthelsen asserted that he received a confirmation that a facsimile (fax) transmission of the Complaint was received by Weinberg. By letter dated December 19, 2002, Weinberg asked the NFLPA whether his receipt of the Complaint by certified mail on November 29, 2002 extended the time he had in which to file an answer to December 29, 2002.

2 The merits of that Complaint and of Weinberg's defenses thereto are not the subject of this proceeding. The Disciplinary Committee's allegations will be addressed on the merits in an arbitration hearing scheduled for April 2003.

By letter dated December 30, 2002, Harvey Steinberg, Esq. (Weinberg's former attorney) advised the NFLPA that:

> . . . [Weinberg] hereby denies all allegations in the [Complaint], and will file a supplemental response by January 10, 2003, explaining his position.

On January 27, 2003, Steinberg filed a response to the Complaint on behalf of Weinberg, which was received by the NFLPA on approximately January 29, 2003.

In a letter dated February 6, 2003, the Disciplinary Committee advised Weinberg that it had decided:

> . . . to immediately revoke your certification as an NFLPA Contract Advisor pursuant to Section 6B of the NFLPA Regulations Concerning Contract Advisors because of the conduct described in the Disciplinary Complaint filed against you on November 19, 2002. In making its decision, the Committee considered all of the information presented by you and your representatives in the conference call today.

On February 15, 2003, Wayne G. Travell, Esq. filed a Motion to Stay Weinberg's decertification pending the final resolution of his appeal dated February 7, 2003. The NFLPA filed a response on February 17, 2003. Based on the inability of the parties to resolve this matter amicably, it proceeded to hearing as set forth earlier in this decision.

DISCUSSION AND ANALYSIS

Article II, Section 1 of the CBA establishes the CBA as the document which governs all employment terms and conditions for players in the NFL. By its *negotiated* terms, the provisions of the CBA:

> supersede conflicting portions of the NFL Player Contract, the NFL Constitution and Bylaws, or any other document affecting terms and conditions of employment of NFL players, and all players, Clubs, the NFLPA, the NFL, and the Management Council will be bound hereby. The provisions of the Stipulation and Settlement Agreement, *as amended*, in White v. NFL, NO. 4-92-906 (D. Minn.) ("Settlement Agreement"), shall supersede any conflicting provisions of this Agreement.

Article VI, Section 1 of the CBA recognizes that the NFLPA regulates the conduct of Contract Advisors, bars the NFL Clubs from dealing with Contract Advisors who are not certified by the NFLPA and gives the NFLPA "sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification" of a Contract Advisor. Thus, the dealings of Contract Advisors are subject to the provisions in the CBA.

In Reggie White v. National Football League, Civ. No. 4-92-906 (D. Minn., March 30, 2000), Judge Doty held that NFLPA certified Contract Advisors were "bound by the terms of the CBA

. . . ." Id. at 18. He first found that the parties to the CBA intended to bind Contract Advisors to that agreement. Id. at 9. Judge Doty concluded that Contract Advisors "consented to be bound by the terms of the CBA . . . ." Id. at 13, noting that Advisors negotiate player contracts "only because the NFLPA [had] delegated a portion of its exclusive representational authority to [Contract Advisors]". Id. He found an "economic interrelationship" existed between players and Contract Advisors such that "it is not legally tenable for player agents to claim that they are strangers to the core legal agreements [the CBA and another agreement that is not relevant to Weinberg's case] entered into by the NFLPA and the players" Id. at 14. He also found that Contract Advisors enjoy considerable benefits that flow directly from the CBA. Judge Doty concluded:

> When third parties like the [Contract Advisors] silently reap the benefits of contractual agreements like the CBA and SSA, they cannot later disclaim the obligations these agreements impose on them. Id. at 14.

In addition, Judge Doty pointed out that Contract Advisors were required by the Section 3.A(15) of the NFLPA Regulations to become familiar with the "applicable Collective Bargaining Agreements and other governing documents".

Furthermore, the explicit terms of Article LV, Section 14 of the CBA are binding on "representatives [and] agents". This is additional evidence that the activities of Contract Advisors are governed by the CBA.

Therefore, because Contract Advisors are subject to the provisions in the CBA (including Article VI), because the CBA is binding upon them according to Article LV, Section 14, and based on the analysis in Reggie White v. National Football League, I conclude that the CBA, specifically Article VI, Section 1 as amended in 2000, applies to Contract Advisors.

The evidence established that the March 2000 resolution of Board regarding "immediately invalidating" the certification of a Contract Advisor constituted an amendment to the NFLPA Regulations. By its terms, this amendment clearly applies to Contract Advisors.

Thus, both the 2000 amendment to the CBA and the March 2000 Amendment to the NFLPA Regulations established a new procedure whereby the Disciplinary Committee was authorized to decertify a Contract Advisor "immediately" when "extraordinary circumstances" existed that warranted such action. However, the record indicated that prior to the adoption of these two (2) amendments, Section 6E of the NFLPA Regulations provided for an automatic stay of the imposition of the Disciplinary Committee's "proposed disciplinary action" pending the appeal of that action.

The evidence demonstrated that the stay provision of Section 6E was already in place and operational in 2000. Thus, the stay provision was known to the drafters of the 2000 amendments to the CBA and the NFLPA Regulations when those amendments were adopted. Notwithstanding the existence of Section 6E, those amendments were silent on the issue of the stay. I find that such silence raises ambiguity as to the applicability of the stay to the provisions in the amendments regarding "immediate" decertification. When ambiguity exists as to the meaning of a document, outside evidence may be considered in order to establish the meaning and to resolve the ambiguity. Thus, in the present situation, it is necessary to consider evidence of the intent of the parties as to the meaning of these provisions.

Armstrong's unrefuted testimony established that the 2000 amendments to the CBA and the NFLPA Regulations were in the aftermath of the Tank Black litigation. That case involved a Contract Advisor who was engaged in fraud and misappropriation of players' monies, but nevertheless was permitted to continue representing players while his discipline was on appeal because of the automatic stay provision in Section 6E. Armstrong indicated that it was clear to the Board that such a situation was outrageous and must not occur in the future. He made clear that the Board wanted to provide for a means by which an appeal would not stay decertification, and so it adopted the March 2000 Amendment.

Armstrong also testified, without contradiction, that the Board's resolution, which became the March 2000 Amendment to the NFLPA Regulations, was not self-enforcing. Based on that knowledge, the substance of the Board's amendment was included in an amendment to the CBA that was renegotiated in 2000; the change appears at Article VI, Section 1, as noted earlier in this decision.

In his testimony regarding the intent of the drafters as to the stay provision in Section 6E, Armstrong specifically stated that:

> The intent of the rule was to be able to prevent an agent from continuing an activity until his appeal was heard. The intent of the rule was to immediately revoke an agent's certification based on what the committee considered serious misconduct and still allow that person to appeal down the road.

Nothing could be clearer. Armstrong's testimony established that the goal of the 2000 amendments to the CBA and the NFLPA Regulations was to allow the Disciplinary Committee in the presence of "extraordinary circumstances" to immediately decertify the representational activities of a Contract Advisor. As Armstrong pointed out, the drafters also intended to permit the Contract Advisor to appeal such action by the Disciplinary Committee. Armstrong stated, however, that the drafters' intent was that any appeal would occur after the Disciplinary Committee's immediate decertification.

Armstrong made clear that although the March 2000 Amendment provided for an appeal "pursuant to Section 6E" of the NFLPA Regulations, that statement referred only to the provisions in Section 6E dealing with how and when to file an appeal, but not to the stay provision of Section 6E. Armstrong's testimony on this point is supported by the principle of contract[3] interpretation which provides that a contract must be read in its entirety and in such a fashion that gives meaning to all of the provisions of the contract.

To the contrary, Weinberg argued that the stay provision was preserved even as to appeals from action taken by Disciplinary Committee in "extraordinary circumstances" that would allow for "immediate" decertification pursuant to the March 2000 Amendment and the amendment to the CBA. This

3 While the NFLPA Regulations are not a "contract" the same principle applies to an analogous document, such as this set of rules.

argument is unpersuasive. The drafters clearly intended that the 2000 amendments to the NFLPA Regulations and to the CBA would preclude a stay of an immediate disciplinary action against a Contract Advisor. If Weinberg's position is upheld, the whole purpose and intent of those two (2) amendments would be vitiated.

Another principle of contract interpretation provides that provisions that are specific control over provisions that are general. The automatic stay provision in Section 6E applies to disciplinary actions. This is more general than the March 2000 Amendment, which applies directly to a specific disciplinary action, to wit: the "immediate" decertification in "extraordinary circumstances" for conduct of "a serious nature". Thus, the immediate decertification contained in the March 2000 Amendment controls over the stay provisions in Section 6E.

Based on the foregoing analysis, I conclude that the "immediate" decertification of a Contract Advisor by the Disciplinary Committee is not stayed by an appeal. Weinberg raised specific arguments disputing this conclusion. I address those arguments below.

Weinberg argued that there was no reliable or authoritative statement of the NFLPA Regulations. He pointed out that the evidence indicated that no fresh printing of the NFLPA Regulations had been made in more than four (4) years. He asserted that the web site was not reliable and/or current insofar as the text it maintained of these governing documents. He noted that he received a copy of Section 6B from Berthelsen which did not conform exactly to the language of Section 6B apparently published on the web site or to the language of Section 6B in the printed NFLPA Regulations. Weinberg contended, by implication, that he was not on notice of the applicable changes to the CBA and/or the NFLPA Regulations that eliminated the automatic stay when the Disciplinary Committee imposed immediate decertification in "extraordinary circumstances".

The record indicated that the NFLPA's web site was not always entirely current or accurate. The NFLPA acknowledged in its opposition to Weinberg's motion that no final text of the NFLPA Regulations has been printed since 1998. It indicated, however that an updated text of the NFLPA Regulations incorporating "all of the amendments passed since 1998" is being prepared, but that its distribution was awaiting "any changes the player reps choose to make at their annual meeting" in March 2003. Thus, the record demonstrates that there might be some different texts of Section 6B available from various sources. What is clear, however, is that the Board passed the March 2000

Amendment and distributed it to Contract Advisors in May 2000. The evidence establishes that such amendment made a change to the NFLPA Regulations and that such change was an enforceable rule by which Contract Advisors must abide.

In addition, Section 3A.(15) of the NFLPA Regulations imposes an obligation on Contract Advisors to "become and remain sufficiently educated with regard to NFL structure and economics, applicable Collective Bargaining Agreements and other governing documents, basic negotiating techniques, and developments in sports law and related subjects." Thus, Weinberg had a duty as a certified Contract Advisor to take what steps were necessary to maintain a thorough knowledge of the rules governing Contract Advisors. The March 2000 Amendment was distributed to Contract Advisors and changed the NFLPA Regulations. According to the NFLPA Regulations, Weinberg was obligated to be aware of that change.

Weinberg's actual knowledge of a change in the NFLPA Regulations would be significant if he were accused of violating a new provision of the NFLPA Regulations. That is not the case here. Indeed, the NFLPA Regulations which Weinberg is alleged to have violated have not changed since 1998. The provision which did change and of which Contract Advisors were notified in May 2000 dealt with the immediacy with which discipline was imposed by the Disciplinary Committee. The March 2000 Amendment to the NFLPA Regulations did not affect Weinberg's alleged violations of these rules, but rather the procedure by which discipline would be implemented.

Weinberg objected that the Disciplinary Committee decertified him in February 2003, not in November 2002, when it filed the Disciplinary Complaint against him. He argued that the text of Section 6B on the NFLPA's web site required that the Disciplinary Committee revoke or suspend his certification "with the filing of the Disciplinary Complaint", that is, at the same time that the Disciplinary Complaint is issued. This argument is unconvincing. In the first instance, the language in the text of Section 6B on which Weinberg relies is permissive, not mandatory; it provides:

> . . . the Disciplinary Committee may immediately revoke or suspend his/her Certification with the filing of the Disciplinary Complaint. * * * (Emphasis supplied)

Thus, the Disciplinary Committee was not required to decertify Weinberg "immediately", that is, at the same time as its November 2002 Disciplinary Complaint. The record demonstrated that in November 2002, the Disciplinary Committee gave Weinberg the opportunity to respond to the Disciplinary Complaint and to present his position regarding the allegations against him. It is clear that the Disciplinary Committee wanted to hear Weinberg's side of the story before it took any significant action. Providing Weinberg the opportunity to respond to the charges was not prejudicial to him; indeed, it was more beneficial to him to respond before the Disciplinary Committee decided what disciplinary action, if any, would be imposed.

Weinberg also contended that denying him the benefit of the automatic stay works a hardship on him because of the proximity of the free agency period, which starts on February 28, 2003. Without ruling on the timeliness issue, I note that at every stage of the proceedings, the process slowed or stalled because of Weinberg's unhurried and/or incomplete responses. Thus, Weinberg bears substantial responsibility for the timing of these proceedings and the timing of the decision on this motion was dictated significantly by Weinberg's own actions. Furthermore, while the proximity of the free agency period might create a harsh impact on Weinberg, that potential cannot stand in the way of the lawful decision on the motion. In this regard, I note also that letters from 15 NFL players represented by Weinberg were placed in evidence. These letters indicated that the players will be adversely affected if Weinberg is decertified. Notwithstanding the potential negative effects on Weinberg's clients cited in these letters, the applicability of the stay in this case must be evaluated on the basis of the relevant governing provisions in the NFLPA Regulations and the CBA.

The NFLPA challenged Weinberg's answer to the Complaint as untimely. I note the NFLPA's assertion that it faxed the Complaint to Weinberg on November 19, 2002 as well as the return receipt indicating receipt on November 29, 2002. When considering either date, the evidence established that Weinberg's responses to the Disciplinary Committee were made more than 30 days after the issuance of the Complaint, thereby exceeding the time limits imposed by the NFLPA Regulations.

Notwithstanding that Weinberg exceeded the 30 day time period, I find that the NFLPA was not prejudiced by his delayed responses. Therefore, I do not deem Weinberg to have "accept[ed]" the discipline imposed, as provided in Section 6E of the NFLPA Regulations, and resolve the motion as indicated herein.

****

ORDER

****

After considering all of the evidence presented at hearing and the arguments made, I find that:

1. The February 6, 2003 decertification of Steven Weinberg by the Disciplinary Committee is not stayed by the notice of appeal of that discipline filed by Steven Weinberg on February 7, 2003;

2. Steven Weinberg's Emergency Motion to Stay Disciplinary Action dated February 15, 2003 is denied.

DATED: FEB 26 2003

Roger P. Kaplan

Alexandria, Virginia

NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

In The Matter of Arbitration Between NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION DISCIPLINARY COMMITTEE and STEVEN WEINBERG	Case No. NFLPA 03-D1

OPINION AND AWARD

ROGER P. KAPLAN, ESQ., ARBITRATOR

APPEARANCES:

For NFLPA Disciplinary Committee: Richard Berthelsen, Esq.

For Steven Weinberg: Alan D. Strasser, Esq.

STATEMENT OF THE CASE

On February 7, 2003, Mr. Steven Weinberg appealed the National Football League Players Association (NFLPA) Disciplinary Committee's (Committee) decision to immediately revoke his certification as an NFLPA Contract Advisor on February 6, 2003. I held a hearing on a Motion to Stay the discipline on Tuesday, February 18, 2003 in Alexandria, Virginia. Following consideration of the evidence and argument presented by the parties, I denied Weinberg's Motion to Stay on February 26, 2003. On April 29, and 30, 2003, I held hearings in Alexandria, Virginia on the revocation of Weinberg's certification. Both parties had the opportunity to examine and cross-examine witnesses as well as present evidence and argument in support of their respective positions. A verbatim transcript was made of the proceeding. I received post-hearing briefs from both parties on approximately June 11, 2003.

ISSUES

Upon consideration of the record, I find that the issues are:

1. Whether Contract Advisor Steven Weinberg has engaged in or is engaging in prohibited conduct, as alleged by the Committee in its November 19, 2002 Complaint?

2. If so, whether the discipline should be affirmed or modified?

PERTINENT NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS (as Amended June 1, 1998)

SECTION 3: STANDARD OF CONDUCT FOR CONTRACT ADVISORS

The objective of the NFLPA in implementing these Regulations is to enable players to make an informed selection of a Contract Advisor and to help assure that the Contract Advisor will provide effective representation at fair, reasonable, and uniformly applicable rates to those individual players he/she represents, and to avoid any conflict of interest which could potentially compromise the best interests of NFL players.

A. General Requirements

. . . a Contract Advisor shall:

(14) Fully comply with applicable state and federal laws;

B. Prohibited Conduct

Contract Advisors are prohibited from:

(7) Engaging in any other activity which creates an actual or potential conflict of interest with the effective representation of NFL players;

(13) Engaging in unlawful conduct and/or conduct involving dishonesty, fraud, deceit, misrepresentation, or other activity which reflects adversely on his/her fitness as a Contract Advisor or jeopardizes his/her effective representation of NFL players;

(22) Violating any other provision of these Regulations.

SECTION 4: AGREEMENTS BETWEEN CONTRACT ADVISORS AND PLAYERS; MAXIMUM FEES

B. Contract Advisor's Compensation

(4) A Contract Advisor is prohibited from receiving any fee for his/her services until and unless the player receives the compensation upon which the fee is based. However, these Regulations recognize that in certain circumstances a player may decide that it is in his best interest to pay his Contract Advisor's fee in advance of the receipt of any deferred compensation from his NFL club. Accordingly, a player may enter into an agreement with a Contract Advisor to pay the Contract Advisor a fee advance on deferred

compensation due and payable to the player. Such fee advance may only be collected by the Contract Advisor after the player has performed the services necessary under his contract to entitle him to the deferred compensation. Further, such an agreement between a Contract Advisor and a player must be in writing, with a copy sent by the Contract Advisor to the NFLPA.

For purposes of determining the fee advance, the compensation shall be determined to be an amount equal to the present value of the deferred player compensation. The rate used to determine the present value of the deferred compensation shall be the rate used in Article XXIV, Section 7(a)(ii) of the 1993 CBA.

APPENDIX C

NFLPA STANDARD REPRESENTATION AGREEMENT

3. Contract Services

Player hereby retains Contract Advisor to represent, advise, counsel, and assist Player in the negotiation, execution, and enforcement of his playing contract(s) in the National Football League.

In performing these services, Contract Advisor acknowledges that he/she is acting in a fiduciary capacity on behalf of Player and agrees to act in such manner as to protect the best interests of Player and assure effective representation of Player in individual contract negotiations with NFL Clubs. * * *

FACTS

This proceeding concerns Weinberg's appeal of his decertification by the NFLPA Disciplinary Committee on February 6, 2003. The Committee refused to stay that decertification based on Weinberg's February 7, 2003 appeal of its decision. On

February 26, 2003, following a hearing on the matter, I denied Weinberg's Motion to Stay his decertification. As indicated, I held hearings on April 29, and 30, 2003 on Weinberg's appeal of his decertification, at which the following evidence was adduced.

Weinberg has been an NFLPA certified Contract Advisor since approximately 1982. His office is in Dallas, Texas. As of February 6, 2003, he served as a Contract Advisor for approximately 37 NFL players.

In early 1998, Weinberg met Howard Silber, another NFLPA certified Contract Advisor. Weinberg and Silber agreed to form a joint venture whereby they would share fees and expenses associated with representing basketball players. Weinberg and Silber later entered into an oral agreement regarding the joint representation of NFL players.

In early 1999, the partnership between Weinberg and Silber ended acrimoniously; Weinberg filed litigation in Texas and Silber filed in California. Weinberg testified that in April 1999, he requested the NFLPA mediate his dispute with Silber. Such mediation never took place.

Weinberg and Silber met, but were unsuccessful in resolving their dispute. Pursuant to an arbitration agreement dated December 1, 1999, they submitted the dispute to Arbitrator Gary Berman. Arbitrator Berman conducted a hearing on March 17, 2000. Based on the evidence before him, Arbitrator Berman issued an Award on October 20, 2000 (2000 Award), in which he ordered Weinberg and Silber to split the Contract Advisor fees paid with respect to one of their clients, Stephen Davis (a running back for the Washington Redskins). He found Davis was a client of the Weinberg-Silber joint venture in 1999 and in the negotiations by Weinberg which culminated with Davis' signing a multi-year contract with the Washington Redskins (Redskins). Arbitrator Berman ordered Weinberg to pay Silber $47,745 based on Davis' $3,183,000 compensation for the 1999 NFL season. He also ordered that Weinberg pay $28,500 in Silber's reasonable attorney's fees. In addition, Arbitrator Berman made the following findings:

> 4. That as a result of the testimony presented by Mr. Weinberg and Mr. Silber, the arbitrator is convinced that these men are guided solely by self-interest, without regard for each other or their clients;
>
> 5. That based on all the evidence presented, the arbitrator, in the spirit of equity, to the extent that such principle can apply to the parties in this matter, orders that there be a split on fees paid only with respect to one of the joint-venture's clients, Washington Redskins running back Stephen Davis.

Silber and Weinberg filed cross motions to confirm and vacate Arbitrator Bermans' 2000 Award on November 9, 2000 and November 29, 2000 respectively in the United States District Court for the Northern District of Texas Dallas Division. On April 25, 2001, the Court issued a Memorandum Opinion & Order in which it remanded the matter to Arbitrator Berman for correction of minor errors, but without disturbing the overall thrust of his 2000 Award.

On July 30, 2001, Arbitrator Berman issued an Amended Arbitration Award (Amended Award). He ordered that Weinberg pay Silber one and one half percent (1.5%) of the amount in Davis' 1999 NFL Player Contract ($14,010). Arbitrator Berman ordered further that as Davis paid Weinberg Contract Advisor fees for the remaining years of his Redskins' contract, Weinberg must in turn pay Silber a portion of those fees amounting to one and one half percent (1.5%) of Davis' earnings.

Weinberg and Silber filed motions and amended motions respectively to challenge or confirm Arbitrator Berman's Amended Award. On January 22, 2002, the District Court granted Silber's motion to confirm the Amended Award and entered a final judgment in the case. On February 28, 2002, the District Court granted Silber's motion to amend the January 22nd final judgment, apparently insofar as the post-judgment interest rate. Weinberg appealed to the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit). He did not post a supersedeas bond when he appealed.

Candy Weinberg, Weinberg's wife, testified that in April 2001, while preparing their tax return, she realized that the value of their Merrill-Lynch brokerage account had been considerably reduced. Up until this time, Weinberg had apparently controlled the family's investments. Candy Weinberg testified that she noted that Weinberg had lost money in the past and told him that she was going to ensure that he would not be able to touch that money in the future. She indicated that in order to address this matter, the couple set up an offshore trust account in Nevis, wherein approximately $150,000 was placed in an account for each of the Weinbergs. Candy Weinberg testified that she wanted the money to be as hard to reach as possible for her husband.

The trust in Nevis (a Caribbean country) was known as The SAW Investment Trust (Trust) and Weinberg was the Settlor. It provided, in relevant part:

> Notwithstanding the above paragraph or any other provision of this Trust, should at any time the Trustee receive notice of an Event of Duress or otherwise declare an Event of Duress, during such period of time as the Event of Duress shall be

declared, the Trustees shall pay, apply or accumulate the Trust Funds to or for the benefit of the Settlor or to such persons (specifically excluding, however, any and all distributions or directions to make distributions [regardless from whom such directions are given] to any and all Excluded Persons), as the Settlor in his voluntary exercise of a limited power of appointment shall by will, expressly referring to this power appoint. The provisions of this paragraph 2 specifically supersede any and all other provisions hereof.

As defined in the Trust, an "Event of Duress" included a court judgment which would prevent the free disposal of any monies, investments or assets by the Trustees.

Weinberg testified that he made further transfers to the Trust following its establishment. He could not recall the precise date of the last such transfer, but testified that he ceased the transfers in "early 2002". Weinberg stated that he made no transfers following the February 28, 2002 decision by the District Court because he was advised that to do so risked violation of a law barring fraudulent transfers[1].

Weinberg testified that in the Fall of 2001, he discussed with his attorney the formation of a new business entity. In March 2002, Weinberg formed "Sports at Work Enterprises, Inc." (Sports at Work). Candy Weinberg was the president of Sports at

1 The law in question is apparently the Texas version of the Uniform Fraudulent Transfer Act.

Work and Weinberg was an employee. Weinberg testified that his annual salary was $60,000; for several years previous to the change in business entities, his earnings had been in the $300,000 to $400,000 range.

On June 6, 2002, Weinberg was deposed by Silber's attorney in connection with the District Court litigation. Weinberg stated that he had "plenty of assets . . . to pay Howard Silber" and that the Trust had nothing to do with the litigation. Weinberg indicated that he had assets in the form of salary accounts receivable and future income from current clients. At the deposition, Weinberg indicated that he received $115,000 from Davis on March 27, 2002 and that he used the monies to pay various personal bills on the same day.[2]

Following Weinberg's June 2002 deposition, Silber began filing garnishment actions against certain NFL players (who were Weinberg's clients) in an effort to recover the monies due him pursuant to the Amended Award and the District Court's Amended Final Judgment. Some of the players were served when they came to Dallas to participate in 2002 regular season NFL games

2 The monies received from Davis included his fees for a signing bonus that Davis earned when he signed his NFL Player Contract in September 2000, but which was payable in installments, including one due April 1, 2002. The monies also included his fees for a roster bonus that Davis did not earn until April 1, 2002.

against the Dallas Cowboys. Weinberg testified that he did not believe that Silber could garnish monies from the players. Once the garnishments commenced, however, Weinberg procured legal representation for some of the affected players. In addition, John Collins, an attorney retained by the NFLPA in connection with these garnishments, testified that at least three (3) or four (4) players were served as they were getting ready to play a game, which he characterized as "distracting, to say the least". Collins testified further that he eventually negotiated a settlement with Silber's attorney whereby monies owed to Silber were paid into an escrow account pending Weinberg's appeal of the judgments against him.

In a letter dated November 19, 2002, the Disciplinary Committee filed a Disciplinary Complaint (Complaint) against Weinberg pursuant to Section 6B of the NFLPA Regulations. The Complaint charged that Weinberg's conduct breached his fiduciary duty to NFL players under the NFLPA Regulations Governing Contract Advisors (NFLPA Regulations). The Disciplinary Committee indicated that Weinberg's conduct violated Sections 3A(14), 3B(7), 3B(13), 3B(22) and 4B(4) of the NFLPA Regulations.

On January 6, 2003, a panel of the Fifth Circuit rejected Weinberg's appeal. The Circuit Court upheld the District

Court's decision; it found that some of Weinberg's arguments were "specious" and "meritless" (Fifth Circuit at 5-7). The Circuit Court addressed other arguments made by Weinberg which it found to be "equally meritless and [to] border on frivolous." (Fifth Circuit at 9). The Circuit Court rejected Weinberg's challenge that Arbitrator Berman had exceeded his authority by basing his award on Davis' 2000 NFL Player Contract with the Redskins. (Fifth Circuit at 9). The Court indicated that, just as the District Court, it would not "second-guess the arbitrator's resolution of this dispute". (Fifth Circuit at 10). The Fifth Circuit stated that:

> Weinberg's remaining arguments, that the award was not timely, that the agreement to arbitrate was "void for vagueness," and that the lack of formal procedures and rules was a "jurisdictional defect" are similarly feckless. (Fifth Circuit at 11).

On February 6, 2003, the Disciplinary Committee revoked Weinberg's certification as a Contract Advisor. The Disciplinary Committee advised Weinberg that it decided:

> . . . to immediately revoke your certification as an NFLPA Contract Advisor pursuant to Section 6B of the NFLPA Regulations Concerning Contract Advisors because of the conduct described in the Disciplinary Complaint filed against you on November 19, 2002. In making its decision, the Committee considered all of the information presented by you and your representatives in the conference call today.

Based on the inability of the parties to resolve this matter amicably, it proceeded to hearing as set forth earlier in this decision.

DISCUSSION AND ANALYSIS

The present case arises following a dispute between Weinberg and Silber. The substance of that dispute involving those Contract Advisors is not before me. Thus, this arbitration proceeding is not the forum to re-litigate the issues decided in connection with their previous arbitration and the court orders which finally resolved the claims between Weinberg and Silber. The gist of this matter concerns whether Weinberg violated specific provisions of the NFLPA Regulations.

Fitness as a Contract Advisor

The evidence established that Weinberg and Silber entered into an oral agreement to represent NFL players. There came a point where their relationship ended and their joint venture ceased to function and/or do business. The record is clear that litigation ensued, and that Weinberg and Silber agreed in writing to resolve their dispute through arbitration. Notwithstanding such agreement to abide by the outcome of the arbitration, Weinberg proceeded to challenge the Arbitrator's decision. The District Court litigation which followed sought to confirm or to clarify Arbitrator Berman's decision. Even though certain portions of Arbitrator Berman's decision required clarification and/or correction of minor, administrative errors, the core and substance of his decision remained as Arbitrator Berman had issued it. A key element of Arbitrator Berman's decision was the determination that Weinberg must pay Silber a fixed amount. Arbitrator Berman based the measure of the monies owed by Weinberg to Silber on the Contract Advisor fees owed or that would be owed from Davis. The heart of the matter before me is Weinberg's conduct with respect to his obligation to pay Silber.

The evidence established that during the time period that Weinberg was contesting Arbitrator Berman's decision, Weinberg set up a Trust in Nevis. Notwithstanding Weinberg's assertions that the Trust was designed to satisfy Candy Weinberg's concerns about his management of their investments, the record indicated that Weinberg (as Settlor of the Trust) had broad authority over the funds in the Trust. This authority extended even to the occurrence of an "Event of Distress" such as a judgment from the District Court. Thus, Candy Weinberg's assertion that the Trust was designed to keep him from managing the funds therein is not persuasive. Indeed, the record demonstrated that Weinberg's placement of funds in the offshore Trust reasonably could be anticipated to make it more difficult for creditors, including judgment creditors such as Silber, to gain access to those monies. The timing of the creation of the offshore Trust in such close proximity to the judgment against Weinberg and the characteristics of the offshore Trust are more than mere coincidence. The evidence also showed that Weinberg ceased to make payments to the Trust following the February 28, 2002 District Court decision because he was advised that such transfers might violate the Uniform Fraudulent Transfer Act.

Similarly, the evidence established that the effort to create Sports at Work, and the attendant assignment of assets from Weinberg to that entity, was begun following Arbitrator Berman's Amended Award and during the litigation regarding its confirmation in the District Court. In addition, the record indicated that although the actual assignment of assets was in writing, neither Weinberg's employment agreement nor the agreement whereby the assets would be assigned was in writing. The timing of the creation of Sports at Work and the assignment of assets attendant to the creation of the new entity established that the creation of Sports at Work was related to the course of the litigation.

Based on the evidence related to the offshore Trust and to the establishment of Sports at Work, I conclude that these two efforts were undertaken by Weinberg to shield his assets from Silber. In addition, Weinberg's efforts to prevent Silber from collecting just debts were unprincipled. All of these actions reflect adversely on Weinberg's suitability as a Contract Advisor. Conduct such as Weinberg's here by its very nature jeopardizes his effective representation of NFL players.

Further, according to the terms of Section 3A of the NFLPA Regulations and Section 3 of the Standard Representation Agreement, a Contract Advisor is required to act in a fiduciary capacity on behalf of his/her players. Such requirement is a clear indication of the high standard of conduct expected from a Contract Advisor.

Section 3B(13) of the NFLPA Regulations prohibits a Contract Advisor from "activity which adversely reflects on his/her fitness as a Contract Advisor". I note that Arbitrator Berman and the District Court ordered Weinberg to pay Silber. Notwithstanding certain technical corrections required for the 2000 Award, the monies owed by Weinberg remain unpaid, even though the amount was ordered by the Arbitrator and confirmed by several courts. Nevertheless, Weinberg has avoided payment of such monies owed by hiding assets and by violating the letter and spirit of his written agreement with Silber to resolve their dispute. Such conduct by Weinberg clearly reflects poorly on his fitness as a Contract Advisor.

Conflict of Interest

With respect to Weinberg's alleged conflict of interest with the effective representation of NFL players, the evidence established that once Arbitrator Berman held that Weinberg owed Silber monies and the Court confirmed that holding, it was reasonable to expect that Silber would attempt to collect on that judgment. As indicated above, Weinberg's actions put his assets beyond the easy reach of his creditors, including Silber. I also note Weinberg's statements at his June 2002 deposition wherein he explained that he had assets. Thus, as he possessed assets, including anticipated payments of Contract Advisor fees from players, Weinberg should reasonably have foreseen that Silber would attempt to satisfy his judgment by garnishing those payments to Weinberg from his clients as they were made.

The record indicated that some of Weinberg's clients received service of garnishment at the stadium shortly before NFL games. In addition, his clients were compelled to respond to legal pleadings, notwithstanding the fact that Weinberg and/or the NFLPA procured legal representation for them.

Collins indicated that Weinberg had available at least three (3) possible means of avoiding a garnishment proceeding; he could have: (1) filed a supersedeas bond; (2) petitioned the Court to approve a different form of collateral; or (3) agreed with Silber on some other collateral for the judgment. Collins testified that in Federal court, such a bond typically would amount to ten percent (10%) of the judgment or approximately $25,000 here. The evidence established that Weinberg's assertion that he would be required to post a bond in the amount of 10% to 15% of the value of the total Contract Advisor fees for Davis' multi-year contract was erroneous. Notwithstanding the fact that the amount that Weinberg would likely have been required to post was significantly less than he claimed it would be, he failed to post a bond. Weinberg also elected not to agree with Silber on a different collateral for the judgment and he did not petition the Court to approve a different form of collateral. These decisions led to Silber's use of garnishment as a means of securing the judgment debt that Weinberg owed. The use of garnishment was a reasonably foreseeable consequence of Weinberg's failure either to pay the judgment to Silber or to follow at least one of the three (3) courses described above. The garnishment proceedings caused the involvement of Weinberg's clients in his ongoing dispute with Silber.

The conflict of interest stated in Section 3B(7) of the NFLPA Regulations is not a conflict between the Contract Advisor and the players he represents. Instead it is a conflict between the Contract Advisor and the "effective representation" of those players. The record demonstrated that the net effect of the garnishment proceedings was to create an "actual or potential conflict of interest with the effective representation of NFL players" because Weinberg's clients were entangled in his dispute with Silber. This entanglement could have been avoided by Weinberg if he had chosen one of the three courses of action described by Collins (i.e., posting bond, agreement as to different collateral or obtaining Court approval for a different form of collateral). Weinberg, however, did not chose one of those three pathways; instead, he chose a course of action that would likely lead to, and did in fact lead to garnishment proceedings which involved his clients.

Fraudulent Transfer

Section 24.005(a)(1) of the Texas Business and Commerce Code defines a fraudulent transfer as to present and future creditors as one where the debtor made the transfer "with the actual intent to hinder, delay or defraud any creditor". Section 24.005(b) sets forth eleven factors which may be given consideration in determining the "actual intent" specified in

Section 24.005(a)(1). These factors include the retention of control of the property transferred, making the transfer when the debtor had been sued or was threatened with suit, transfer of substantially all of the debtor's assets and removal or concealment of assets by the debtor.

As indicated above, the transfers by Weinberg to the Trust and to Sports at Work would reasonably be anticipated to make it more difficult for creditors to gain access to those monies. Thus, the evidence established that the transfers to the Trust and to Sports at Work hindered Silber's efforts to collect his judgment debt from Weinberg. In order to determine if such hindrance was in violation of the Texas version of the Uniform Fraudulent Transfer Act (UFTA), the factors enunciated in Section 24.005(b) must be considered.

First, the Trust documents indicated that Weinberg, as Settlor of the Trust, retained considerable control over the assets transferred to the Trust. Second, the record is clear that Weinberg was threatened with suit or had been sued both when he established the Trust and when he assigned his right to receive fees as a Contract Advisor to Sports at Work. (Collins, a lawyer experienced in the Texas version of the Uniform Fraudulent Transfer Act, testified that this factor was significant, insofar as assessing the status of a transaction as a fraudulent transfer.) Third, notwithstanding Weinberg's insistence at his June 2002 deposition that he had ample assets in the form of his receivables, the evidence established that he transferred substantially all of his assets to the Trust and/or Sports at Work. Finally, there can be little dispute that the transfers by Weinberg to the Trust and/or Sports at Work served to conceal his assets. Thus, the record demonstrated that Weinberg was acting in violation of Texas law, which is prohibited under the NFLPA Regulations.

Early Collection of Contract Advisor Fees

The record indicated that Weinberg acknowledged the early receipt of payment from Davis of the Contract Advisor fees associated with Davis' roster bonus. Weinberg received those monies on March 27, 2002, despite Davis having not yet received the compensation upon which the Contract Advisor fees were based, in violation of Section 4B(4) of the NFLPA Regulations. I note this is a technical violation. I note further Weinberg's assertion that the Contract Advisor fees were paid by Davis on March 27th because it was convenient for him to pay the monies by wire to Weinberg on that particular day.

Notwithstanding the technical nature of the violation by an early collection of Contract Advisor fees, this violation adds support to the finding that Weinberg engaged in concealing assets from Silber. A creditor who knows that a payment to his/her debtor is due on a date certain is likely to keep watch for that payment to arrive in the debtor's account, and then attempt to satisfy his/her debt from those newly-arrived monies. By receiving early payment of Contract Advisor fees from Davis, Weinberg had the opportunity to conceal those monies because Silber would not have been alert to the arrival of those monies as he was expecting them to be paid to Weinberg a few days later.

Penalty

As to the penalty for his actions, the evidence established that Weinberg's misconduct dealt with his own fitness as a Contract Advisor; his entangling the players whom he represented in his dispute with Silber and his technical violation in connection to the payment of Davis' roster bonus.

Revocation of certification for a period of three (3) years is the most severe penalty that the Disciplinary Committee can impose. The NFLPA Disciplinary Committee suspended Contract Advisor Tim Jumper for two (2) years because he failed to conduct due diligence in connection with an investment for a player he represented. In response to Jumper's appeal, I upheld the suspension in NFLPA Disciplinary Committee and Jumper, No. 01-D10 (Kaplan 2002). The NFLPA Disciplinary Committee revoked the certification of Tank Black for three years alleging that he had swindled players by means of a pyramid scheme. Prior to the adjudication of Black's appeal, he was imprisoned for criminal conduct related to that activity. In Taylor and Cavazos, No. 01-49 (Kaplan 2002), the Contract Advisor used a player's credit card without authorization and did not repay the player. On November 20, 2002, the NFLPA Disciplinary Committee revoked Cavazos' certification. In all of these cases, the Contract Advisor's misconduct dealt with his relationship to an NFL player(s) and actual financial harm to those player(s) with whom the Contract Advisor had a Player-Contract Advisor relationship.

In the instant case, the record demonstrated that Weinberg's primary misconduct was connected to his relationship with Silber and the litigation following the collapse of their partnership. While this misconduct by Weinberg did not directly result in a monetary loss to NFL players, as in the case of Jumper, Black or Cavazos, it clearly violated the NFLPA Regulations. In addition, Weinberg's misconduct in relation to Silber led to the entanglement of NFL players in such dispute with Silber. The record also made clear that Weinberg's misconduct was intentional and the entanglement of his clients in his dispute with Silber was a reasonably foreseeable consequence of his misconduct. Thus, although the misconduct by Weinberg does not rise to the same level as the misconduct by Jumper, Black or Cavazos, it warrants a significant period of suspension of his certification as an NFL Contract Advisor. The three (3) year revocation of certification imposed by the Disciplinary Committee is too severe a penalty because of the aspects that distinguish Weinberg's situation from the Jumper, Black or Cavazos cases which are noted above. I conclude that a more appropriate penalty is suspension of his certification until August 5, 2004.

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AWARD

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After considering all of the evidence presented at hearing and the arguments made, I find that:

1. Contract Advisor Steven Weinberg engaged in prohibited conduct as alleged by the Disciplinary Committee in its November 19, 2002 notice of discipline;

2. The appeal of Contract Advisor Steven Weinberg is sustained in part and denied in part;

3. The certification of Contract Advisor Steven Weinberg is suspended until August 5, 2004.

DATED: SEP 05 2003

(Signed) Roger P. Kaplan

Roger P. Kaplan

Alexandria, Virginia